Supreme Court, U.S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1971

No. 71-333

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, *Petitioner,*

vs.

UNITED STATES OF AMERICA and ETHEL OLSON and LILLIAN SEARLE as Co-Administratrices of the Estate of Sarilla L. Whitlock, Deceased, *Respondents.*

REPLY BRIEF OF BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

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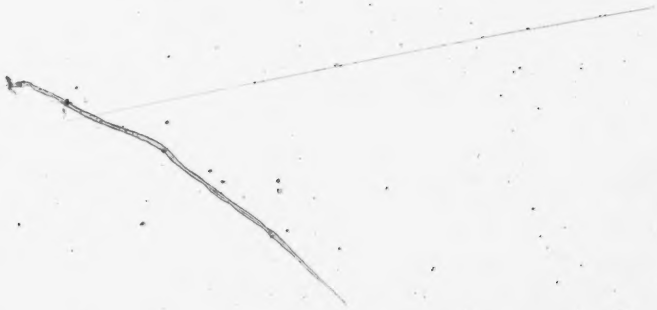

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REPLY BRIEF OF BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

Bank of America National Trust and Savings Association, hereinafter called Bank of America, presents this Reply Brief in answer to the opposition arguments set forth by Respondents United States of America and Ethel Olson and Lillian Searle as Co-Administratrices of the Estate of Sarilla L. Whitlock,

Deceased, the latter hereinafter called Respondent Olson.

ARGUMENT

1. RESPONDENT OLSON MISSTATES THE EFFECT OF THE CONSERVATOR'S MISREPRESENTATIONS TO THE APPOINTING COURT.

Respondent Olson argues (R.B. 3) that Mr. Houlihan's authority as conservator was conditioned upon deposit of certain savings bonds with United California Bank. This is a deceptive and incomplete statement.

In his May 25, 1961, petition to the Superior Court for a reduction in his security bond, Mr. Houlihan represented to the Court that he would deposit certain savings bonds with United California Bank, subject to withdrawal only upon order of the Court (Pet. App. ii). The Superior Court never specifically ordered Mr. Houlihan to deposit savings bonds in United California Bank and never required an acknowledgment from United California Bank that such had been done, as would be proper under Sections 1802 and 541.1 of the *Probate Code* (Pet. App. xvi and xx). Instead, the Court (on May 25, 1961) ordered that letters of conservatorship be issued to Mr. Houlihan upon his posting the reduced bond and on the same day the actual letters of conservatorship were filed and issued:

Petitioner contends, and the Court of Claims agrees, that Mr. Houlihan was appointed conservator and

that the issue in this case is whether Mr. Houlihan, *as conservator,* had the authority to endorse the Treasury checks (Pet. App. vi).

The appointment of Mr. Houlihan was not conditional as Respondent Olson contends (R.B. 3). Nor was the appointment void because of Mr. Houlihan's misrepresentations (P.B. 8 and 9). Under California law, Mr. Houlihan was possessed of those general powers granted by statute to every California conservator and his redemption of savings bonds over a three year period without specific Court approval could not by itself operate to suspend or terminate those general powers. Further, under California law the power of a conservator to endorse checks is a general power.

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2. ARGUMENTS BY RESPONDENT OLSON AS TO THE FORM OF ENDORSEMENT ARE IRRELEVANT

Respondent Olson argues (R.B. 7) that had the checks been endorsed in some other form Petitioner could have avoided this claim. The Court of Claims, however, has made no distinction between the power of a California conservator to redeem savings bonds and the power to endorse checks representing the proceeds of such bonds. *No matter how Mr. Houlihan had endorsed the checks and regardless of the type of account in which deposited, the opinion of the Court of Claims would require a finding of forgery.* Nevertheless, it is well settled that the mere fact that an agent's name does not appear in a negotiable in-

strument, executed or endorsed by him in the name of the principal alone, even where the principal's signature is simulated, does not render the execution or endorsement insufficient. *Kiekhoefer v. United States National Bank of Los Angeles,* 2 Cal.2d 98, 39 P.2d 807, 96 A.L.R. 1251 (1934). Thus, it is the authority to endorse a check and not the physical act of endorsement that determines the validity of the endorsement. In addition, Treasury Department Regulations could not revoke the authority conferred upon Mr. Houlihan. They were made for the convenience and protection of the Treasury and could be and were waived by payment of the checks. *Oquendo v. Federal Reserve Bank of New York,* 98 F.2d 708, 710 (1938).

Both Respondent Olson and The United States of America mistake Petitioner's emphasis on *Oquendo.* That case clearly separates an agent's power to endorse a Treasury check from the agent's scheme to defraud his principal. Petitioner contends that here, as in *Oquendo,* the power of Mr. Houlihan to endorse Treasury checks should have been considered apart from his mishandling of savings bonds and his misrepresentations to the Superior Court. The Treasurer and the Comptroller General of the United States correctly decided that this claim did not involve forgeries within the meaning of the Check Forgery Insurance Fund statute (Pet. App. xv).

CONCLUSION

For the reasons set forth herein and in Bank of America's Petition, a writ of certiorari should issue to review the judgment and opinion of the Court of Claims.

Respectfully submitted,

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Dated: October 18, 1971.